



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2011-0346, FRL-9627-8]

Approval and Promulgation of Implementation Plans; New Hampshire: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the New Hampshire State Implementation Plan (SIP), submitted by the New Hampshire Department of Environmental Services (NH DES) to EPA on February 7, 2011. The SIP revision modifies New Hampshire's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to New Hampshire's PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA proposed approval of these regulatory revisions on June 14, 2011, and received no comments. This action affects major stationary sources in New Hampshire that have GHG emissions above the thresholds established in the PSD regulations.

EFFECTIVE DATE: This rule will be effective on **[Insert date 30 from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2011-0346. All documents in the docket are listed on the www.regulations.gov

web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the New Hampshire SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Mr. Dahl's telephone number is (617) 918-1657; e-mail address: dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. What Is the Background for This Action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the New Hampshire SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,¹ the "Johnson Memo Reconsideration,"² the "Light-Duty Vehicle Rule,"³ and the "Tailoring Rule."⁴ Taken together and in conjunction with the Clean Air Act (CAA), these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

² "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁴ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

Recognizing that some states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year of GHG, and do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA published a final rule on December 30, 2010, narrowing its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including New Hampshire (PSD Narrowing Rule).⁵ In the PSD Narrowing Rule, EPA withdrew its approval of New Hampshire's SIP, among other SIPs, to the extent that SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule. Subsequently, New Hampshire's approved SIP provided the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and Federally required new and modified sources to receive a PSD permit based on GHG emissions only if they emitted at or above the Tailoring Rule thresholds.

On February 7, 2011, in response to the Tailoring Rule and earlier GHG-related EPA rules, NH DES submitted a revision to EPA for approval into the New Hampshire SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to PSD permitting requirements for GHG emissions. Subsequently, on June 14, 2011 (76 FR 34630), EPA published a proposed approval of this SIP submittal. Specifically, New Hampshire's February 7, 2011 SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's June 14, 2011, Federal Register action.

⁵ "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans." 75 FR 82536 (December 30, 2010).

EPA also stated in the proposal that if the Agency did approve New Hampshire's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into New Hampshire's SIP, then Section 52.1522(c) of 40 CFR part 52, as included in EPA's SIP Narrowing Rule -- which codifies EPA's limiting its approval of New Hampshire's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds -- is no longer necessary. Therefore, EPA is amending section 52.1522 of 40 CFR part 52 by removing the unnecessary regulatory language in subsection (c).

II. What Comments Did EPA Receive?

The public comment period on the proposed approval of New Hampshire's SIP revision ended on July 14, 2011. EPA did not receive any comments on the proposed approval of this SIP revision.

III. What Is the Effect of This Action?

Final approval of New Hampshire's February 2, 2011, SIP revision incorporates changes to the state's rules to establish the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, confirming that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements under the approved New Hampshire SIP. EPA has determined the SIP revision approved by today's action is consistent with EPA's regulations, including the Tailoring Rule. Furthermore, EPA has determined this SIP revision is consistent with section 110 of the CAA. Pursuant to section 110 of the CAA, EPA approves this

revision into New Hampshire's SIP.

As a result of today's action approving New Hampshire's incorporation of the appropriate GHG permitting thresholds into its SIP, paragraph 40 CFR 52.1522(c), as included in EPA's PSD Narrowing Rule, is no longer necessary.⁶ Thus, today's action also amends 40 CFR 52.1522 to remove this unnecessary regulatory language.

IV. What Action Is EPA Taking?

Pursuant to section 110 of the CAA, EPA is approving New Hampshire's February 7, 2011 SIP revision relating to PSD requirements for GHG-emitting sources, except for the revised Env-A 619.03(a), which the state withdrew on May 16, 2011. Our approval includes: a new Env-A 101.35, definition of "Carbon dioxide equivalent emissions"; a new Env-A 101.96, definition of "Greenhouse gases"; an amendment to the definition of "Major source" in Env-A 101.115; and certain amendments to Env-A 619.03, "PSD Permit Requirements."

Specifically, EPA is approving into the SIP Env-A 619.03(b)-(e) as revised. However, in place of the state's revisions to Env-A 619.03(a), the SIP retains the previously-approved provision, which was then numbered as Env-A 623.03(a).⁷ New Hampshire's previously-approved PSD regulations became effective under state law on July 23, 2001 and were approved by EPA on October 28, 2002 (67 FR 65710). EPA and New Hampshire agree that relying on previously-approved Env-A 623.03(a) does not affect the manner in which Env-A 619.03(b)-(e) functions. New Hampshire and EPA may take action on the revision to Env-A 619.03(a) in the

⁶ 40 CFR 52.1522(c) codifies EPA's limiting its approval of New Hampshire's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds.

⁷ Env-A 623 was renumbered to Env-A 619 for reasons unrelated to the Tailoring Rule or this proposed revision.

future.

These revisions establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA's June 3, 2010, Tailoring Rule. With this approval, EPA also amends 40 CFR 52.1522 by removing subsection (c).

EPA has made the determination this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. The detailed rationale for this action is set forth in the proposed rulemaking referenced above, and in this final rule.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: January 11, 2012.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE – New Hampshire

2. In §52.1520, the table in paragraph (c) is amended by revising the entries for Env-A 100 and Env-A 600 to read as follows:

§52.1520 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA Approved New Hampshire Regulations

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
Env-A 100	Organizational Rules: Definitions	12/21/2010	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	Added sections 101.35, Env-A 101.96, and Env-A 101.115
*	*	*	*	*
Env-A 600	Statewide Permit System	12/21/2010	[Insert date of <u>FR</u> publication] [Insert <u>Federal Register</u> page number where the document begins]	Added section Env-A 619.03(b)-(e)
*	*	*	*	*

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

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§52.1522 [Amended]

3. Section 52.1522 is amended by removing paragraph (c).

[FR Doc. 2012-2598 Filed 02/03/2012 at 8:45 am; Publication Date: 02/06/2012]